

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 ACDA-19 NIC-01 IO-14 OMB-01 TRSE-00

SCA-01 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00

NSC-10 PA-04 RSC-01 PRS-01 SPC-03 SS-20 USIA-15

SAM-01 SAJ-01 EB-11 NEA-11 DRC-01 /164 W

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R 161240Z FEB 74

FM USMISSION BERLIN

TO AMEMBASSY BONN

SECSTATE WASHDC 2993

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 2 BERLIN 0308

E.O. 11652: GDS

TAGS: PFOR, WB, UR, GW

SUBJECT: RESPONSE TO SOVIET PROTEST ON INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

REF:

A. BONN 1639;

B. BERLIN 217

C. BERLIN 107

D. MOSCOW 871

E. STATE 6883

F. BERLIN 46

1. WE HAVE RECEIVED FROM BRITISH MISSION MESSAGE
EXPLAINING BRITISH RATIONALE FOR DESIRING SOMEWHAT
FULLER ANSWER TO SOVIET PROTEST ON INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS AS WELL AS
A DRAFT TEXT (REF A). BRITISH ARGUMENTATION IS AS
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FOLLOWS:

"THE BRITISH REPRESENTATIVE, AS YOU MAY HAVE HEARD, POINTED OUT THAT IT WAS ALWAYS POSSIBLE TO ANSWER SOVIET PROTESTS OF THIS SORT BY RELYING ON THE FACT THAT THE ESTABLISHED PROCEDURES FOR THE EXTENSION OF TREATIES TO WEST BERLIN WERE DESIGNED TO TAKE CARE OF ANY SECURITY AND STATUS POINTS, AND THAT THE MERE APPROVAL BY THE ALLIED KOMMANDATURA WAS THEREFORE A SUFFICIENT GUARANTEE THAT A PARTICULAR EXTENSION WAS NOT IN CONFLICT WITH THE QA. IN THIS CASE, HOWEVER, THE SOVIET CONCLUSION THAT MATTERS OF SECURITY AND STATUS WERE AFFECTED WAS BASED UPON A MISCONCEPTION WHICH WAS LARGELY VERBAL IN ORIGIN. THE SOVIET DEMARCHE SEEMED TO ASSUME THAT IF A TREATY CONTAINED TERMS SUCH AS TERRITORY, JURISDICTION AND CONSTITUTIONAL PROCEDURES, ITS EXTENSION TO WEST BERLIN IMPLIED THAT WEST BERLIN WAS WITHIN THE TERRITORY, UNDER THE JURISDICTION AND SUBJECT TO THE CONSTITUTION OF THE FRG. THE TRUTH OF THE MATTER WAS, HOWEVER, THAT THERE WAS ALWAYS AN IMPLICATION IN ANY EXTENSION THAT WEST BERLIN WOULD BE TREATED AS IF IT WERE WITHIN THE TERRITORY OF THE FRG, ETC., SOLELY FOR THE LIMITED PURPOSE OF GIVING EFFECT TO THE TREATY RIGHTS AND OBLIGATIONS: THAT WEST BERLIN WAS NOT IN FACT WITHIN THE FEDERAL TERRITORY, ETC., WAS DEMONSTRATED BY THE NECESSITY OF A SPECIAL PROCEDURE FOR EXTENDING THE APPLICATION OF THE TREATY TO IT

"HE WENT ON TO SAY THAT THE SOVIET ARGUMENTS WERE PROBABLY APPLICABLE TO THE GREAT MAJORITY OF THE TREATIES EXTENDED TO WEST BERLIN, SINCE IT WAS UNCOMMON TO FIND A TREATY WHICH DID NOT AT THE VERY LEAST MAKE USE OF THE TERM TERRITORY AT SOME PLACE. IT MIGHT THEREFORE BE ADVANTAGEOUS TO EXPAND THE REPLY SO AS TO NAIL DOWN THIS POINT ONCE AND FOR ALL, IN VIEW OF ITS WIDER IMPORTANCE."

2. DRAFT BRITISH TEXT IS AS FOLLOWS:

" WITH REFERENCE TO THE COMMENTS MADE TO THE
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ALLIED EMBASSIES RECENTLY BY THE FOREIGN OFFICE IN MOSCOW, WE WOULD NOTE THAT THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS WAS EXTENDED TO BERLIN IN ACCORDANCE WITH LONG-ESTABLISHED PROCEDURES AND SUBJECT TO THE EXPRESSED UNDERSTANDING OF THE A K THAT ALLIED RIGHTS AND RESPONSIBILITIES AND ALLIED LEGISLATION ARE NOT THEREBY AFFECTED. MOREOVER, THE AK NOTED THAT ANY DECLARATION BY THE FRG UNDER

ARTICLE 41 OF THIS COVENANT MAY NOT INCLUDE BERLIN WITHOUT AUTHORIZATION OF THE A K. THERE IS THUS NO QUESTION THAT EXTENSION OF THE COVENANT TO BERLIN IS IN ANY WAY INCONSISTENT WITH THE QA OF SEPTEMBER 3, 1971.

"IT IS AN INEVITABLE COROLLARY OF THE EXTENSION TO THE WSB OF INTERNATIONAL AGREEMENTS TO WHICH THE FRG IS A PARTY THAT THE EXTENSION MAY AT FIRST SIGHT APPEAR TO IMPLY THAT THE WSB ARE WITHIN THE TERRITORY, UNDER THE JURISDICTION OF OR SUBJECT TO THE CONSTITUTION OF THE FRG. THE FACT IS HOWEVER THAT THIS APPEARANCE IS BELIED BY THE APPLICATION OF THE ESTABLISHED PROCEDURES OF LONG STANDING WHICH THE QA SPECIFICALLY ENDORSES, THE PURPOSE AND EFFECT OF WHICH ARE TO ASSURE THAT TREATIES CONCLUDED BY THE FRG ARE EXTENDED TO THE WESTERN SECTORS OF BERLIN IN SUCH A WAY THAT QUESTIONS OF SECURITY AND STATUS REMAIN UNAFFECTED, AND TO TAKE INTO ACCOUNT THAT THESE SECTORS CONTINUE NOT TO BE A CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND NOT TO BE GOVERNED BY IT."

3. WE HAVE ADVISED ALLIED MISSIONS THAT WE SEEKING EMBASSY AND DEPARTMENT VIEWS BEFORE DRAFTING. WE HAVE REPRODUCED BRITISH MESSAGE IN DETAIL BECAUSE WE CONSIDER THAT IT RISES TACTICAL QUESTION THAT AFFECTS NOT ONLY THIS PROTEST BUT OTHERS ALREADY MADE, SUCH AS THAT ON FRG LAW EXTENDING PRIVILEGES AND IMMUNITIES TO MEMBERS OF GDR PERMANENT MISSION, AND THOSE NOT AS YET DELIVERED BUT WHICH ARE CERTAIN TO FOLLOW.

4. IN OUR VIEW, BRITISH POSITION IS TINGED WITH CERTAIN NAIVETE. SOVIET PROTESTS AND OUR REJOINDERS ON FRG REPRESENTATION OF WEST BERLIN'S INTERESTS IN CONFIDENTIAL

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TREATIES AND INTERNATIONAL ORGANIZATIONS AND EXTENSION OF FRG LAWS TO WEST BERLIN REMIND US OF OLD DESCRIPTION OF COVENTION OF COMEDIANS. ALL JOKES HAVE BEEN HEARD BEFORE. WHAT COUNTS IS HOW YOU TELL THEM. SOVIETS KNOW THE PUNCH LINES AND ARE INTERESTED IN HOW WE RESPOND, NOT OUR ARGUMENTS. TIMING IS OF ESSENCE.

5. WE ARE OF VIEW THAT APPROPRIATE FORM TO FOLLOW IN PROTESTS SUCH AS SOVIETS HAVE MADE TO ALLIES ON ISSUES LIKE INTERNATIONAL COVENANT AND LAW ON PRIVILEGES AND IMMUNITIES IN SHORT AND TO POINT. DETAILED ARGUMENTATION WHICH SMACKS OF DEFENSIVENESS WILL ONLY WHET SOVIETS APPETITE TO PRESS ON.

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FM USMISSION BERLIN

TO AMEMBASSY BONN

SECSTATE WASHDC 2994

INFO AMEMBASSY LONDON

AMEMBASSY/ MOSCOW 6669

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C O N F I D E N T I A L L SECTION 2 OF 2 BERLIN 0308

6. WE CONSIDER THAT, AT MOST FIRST PARAGRAPH OF BRITISH TEXT, WHICH IS SOMEWHAT EXPANDED VERSION OF FULL TEXT WE PROPOSED IN REF C IS ADEQUATE TO DEAL WITH PROTEST ON INTERNATIONAL COVENANT. BEFORE WE GO BACK TO ALLIED MISSIONS, HOWEVER, WE WOULD APPRECIATE EMBASSY AND DEPARTMENT VIEWS ON BOTH SPECIFIC RESPONSE AND GENERAL TACTICAL QUESTION. ESSENTIALLY SAME ISSUE APPEARS TO BE INVOLVED IN DIFFICULTIES EXPERIENCED WITH PREPARING ALLIED REPLY ON PRIVILEGES AND IMMUNITIES LAW. WE HAVE PROPOSED SHORT TEXT SUGGESTED BY DEPARTMENT (REF E), BUT HAVE BEEN UNABLE IN FULL MONTH TO GET BRITISH, WHO AGAIN PREFER

MORE DETAILED RESPONSE WAS WELL AS MORE ELABORABLE DELIVERY PROCEDURE, TO FOCUS ON IT.

7. ABOVE DRAFTED BEFORE BONN'S 2602 RECEIVED. FOR RECORD, DRAFT U.S. TEXT OF RESPONSE TO FRG LAW ON PRIVILEGES AND IMMUNITIES FIRST RAISED WITH BRITISH JANUARY 14. SECOND MESSAGE REQUESTING BRITISH VIEWS SENT JANUARY 31.
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BRITISH MESSAGE CONTAINING THEIR PROPOSED REVISION OF
OUR TEXT ON INTERNATIONAL COVENANT RECEIVED FEBRUARY 6.
WE INFORMED BRITISH SAME DAY THAT WE WISHED TO HAVE
BENEFIT OF EMBASSY AND DEPARTMENT VIEWS ON BASIC TACTICAL
QUESTION AFFECTING BOTH RESPONSES (REF B OF FEBRUARY 4)
BEFORE ENGAGING IN DRAFTING RESPONSE ON INTERNATIONAL
COVENANT. WE WOULD THEREFORE APPRECIATE EMBASSY AND
DEPARTMENT VIEWS SOONEST SO THAT BOTH PROTESTS CAN BE
ANSWERED NEXT WEEK.KLEIN

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Message Attributes

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Disposition Approved on Date:
Disposition Authority: martinml
Disposition Case Number: n/a
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Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
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